

**ATTORNEY GENERAL OF THE STATE OF NEW YORK
NASSAU COUNTY REGION**

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In the Matter of

PROPERTY TAX REDUCTION CONSULTANTS, INC.

and SEAN ACOSTA,

Respondents.

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**ASSURANCE OF DISCONTINUANCE
PURSUANT TO
EXECUTIVE LAW SECTION 63, SUBDIVISION 15**

Pursuant to the provisions of Article 22-A of the General Business Law (“GBL”) §§ 349 and 350 and Article 5, § 63(12) of the Executive Law, ELIOT SPITZER, Attorney General of the State of New York, has made an inquiry into the business practices of PROPERTY TAX REDUCTION CONSULTANTS, INC. and SEAN ACOSTA (referred to hereinafter collectively as “Respondents” or “PTRC”). Based upon the inquiry, the Attorney General makes the following findings:

BACKGROUND

1. PTRC is a New York corporation with a principal place of business at 2 Glen Cove Road, East Hills, New York.
2. SEAN ACOSTA is the President and 100% shareholder of PTRC.
3. Nassau County's taxing jurisdictions range in size from the county itself to towns, cities, villages, local school districts, library districts and other special districts providing specific services to people in their boundaries.
4. With the exception of cities and those villages which establish their own tax rates for city and village purposes, each year these taxing jurisdictions examine the tentative assessment roll prepared by the Nassau County Department of Assessment and establish budgets which

determine the tax levy (amount of money to be raised by property taxes).

5. Assessing real property means establishing a value on land and improvements to serve as the basis for property taxes. There are approximately 416,000 parcels of land in Nassau County. The Nassau County Department of Assessment assesses each parcel every year.

6. Property owners have the right to protest their assessment. Any person who believes s/he has been aggrieved by an assessment may challenge it, during the grievance period, by themselves or through a representative or attorney. The Independent Assessment Review Commission (ARC) is responsible for ruling on what are referred to as “first level protests”. Property owners who are dissatisfied with ARC’s determination may pursue a second level proceeding in Small Claims Court. Following the first level protest, ARC may order the Department of Assessment to reduce a property’s assessed value. The “assessed value reduction” (“AVR”) of a home is the amount by which a home’s value is reduced after the successful filing of an assessment protest. This figure alone is not enough to determine the exact amount of tax payable, or the reduction produced by the AVR. Such amounts can not be calculated until the tax rate is established. School tax rates are certified on the fourth Monday in September and General (property) tax rates are certified on the third Monday in December. Multiplying the tax rate by a property’s original taxable assessed value (and accounting for exemptions), then multiplying the tax rate by the reduced taxable assessed value (and accounting for exemptions), and subtracting the latter from the former will reveal the amount of the tax savings for that year.

7. Nassau County is home to many companies and law firms which specialize in the business of protesting residential property assessments. These companies are sometimes referred to as tax reduction consultants.

8. PTRC is a tax reduction consultant.

9. Tax reduction consultants generally do not charge consumers a fee for services rendered in connection with unsuccessful assessment protests. Successful protests are generally

billed at the rate of 50% of the property owner's tax savings for that year.

10. PTRC advertised that its fees for the 2005 / 2006 tax period would be 50% of the property tax reduction.

11. The exact amount of tax savings to individual property owners — and, hence, the fee due the consultant --- can not be determined until the tax rate is established, as discussed in Paragraph 6 above.

FINDINGS OF THE ATTORNEY GENERAL

12. PTRC solicits customers in part, by mailing flyers and applications for representation directly to property owners' homes.

13. Homeowners who wish to retain PTRC to protest their home's assessment, simply sign the application and mail it back to PTRC.

14. PTRC filed approximately 14,000 first level residential assessment protests for the 2005 / 2006 tax period. It was successful in approximately 4,800 of the 14,000 residential protests it filed.

15. ARC issued to PTRC a letter setting forth the official AVR for each of the successful assessment protests. However, rather than waiting until certification of the tax rates as is the norm in the industry and as PTRC had done for many years, PTRC prematurely applied the AVR figure to *estimated* tax rates for 2005 / 2006. This calculation generated results which were inflated because the estimated tax rate was higher than the official rate later certified. The results could not have been authenticated until certification of the school and general tax rolls on the fourth Monday in September and the third Monday in December, respectively. PTRC made its calculations well before the tax rolls were certified.

16. PTRC's estimated calculations overstated the tax savings property owners would actually realize.

17. PTRC then generated invoices and prematurely billed property owners using the

estimated / overstated tax savings figures. In addition to the incorrect figures, the invoices contained deceptive statements designed to lead property owners to believe that PTRC had secured larger tax savings on their behalf than they actually did.

18. The false and misleading statements contained in the invoices included but were not limited to the following:

A. A phrase near the top of the page in a large, bold and underlined font which read, **“CONGRATULATIONS ON YOUR PROPERTY TAX REDUCTION!”** This phrase is misleading because the actual tax rate had not been established. PTRC could not have known at the time it mailed the invoices how much of a reduction in taxes a homeowner would actually realize.

B. A phrase in a smaller font but also underlined which read, “The following is a summary of your property tax reduction.” This statement is deceptive for the same reason expressed in A above.

C. A table in the middle of the page which includes the AVR and explains the calculation used to determine what is referred to as “TOTAL TAX SAVINGS”. This calculation is deceptive because it represents that the result was obtained by multiplying the AVR by “the tax rate.” However, the table does not disclose that the tax rate used is merely an estimate. The phrase “TOTAL TAX SAVINGS” is deceptive because it misled consumers into believing that the amount indicated represents their true tax savings when, in fact, their actual savings could not be known until the certification of the tax rate.

D. A table located on the bottom half of the page which contains the calculation used to determine PTRC’s fees. This table is deceptive because it bills consumers 50% of the “TOTAL TAX SAVINGS” which, as indicated above, is an estimated figure. Because the estimate overstated the taxpayers’ savings, consumers were

overcharged.

E. An underlined paragraph near the bottom of the page which reads “...[i]f you pay the amount due to P.T.R.C., Inc., within 14 days, you will benefit with the discounted 2004 tax rate. Nassau County tax rates increase every year. If you do not pay the invoice by June 15, 2005, your next bill will reflect a higher amount due...” This statement is deceptive because it leads homeowner’s to believe that they will receive a discount if they pay by June 15, 2005, this was not true. The statement also indicates that homeowners who pay after June 15, 2005 would be required to pay a higher fee. That statement was not true. In fact, consumers who waited to pay until after certification of the tax rolls actually paid a lower fee.

19. PTRC represented to the approximately 4,800 property owners it billed that it had secured a total of approximately \$5,277,000 in total tax savings on their behalf. In fact, the actual savings were approximately \$4,568,000, a difference of approximately \$709,000. Because PTRC charged consumers 50% of the overestimated tax savings, property owners were overcharged by a total of approximately \$355,000.

20. Under State law, some property owners are entitled to exemptions. When an owner receives an exemption, all or part of the property's assessed value is subtracted and/or taxed at a reduced rate before calculating the taxes owed. Properties that are wholly exempt pay no taxes. Properties which are partially exempt pay some, but not all taxes.

21. In addition to over-estimating the tax savings its clients would receive by under-estimating the tax rate, PTRC *also* over charged its clients by failing to factor into its calculations what effect the existence of certain exemptions might have on a client’s actual tax savings, and consequently, on PTRC’s fees. For example, the owners of parcel No. 36/491/39 are entitled to a “low income senior citizen” exemption which exempts them from 40% of their assessed value. This property received a reduction in assessed value which, when applied to the tax rates, resulted

in a tax reduction of \$1,783. PTRC billed the homeowner 50% of the tax reduction or \$891. However, because the homeowners are exempt from 40% of their assessed value, their actual tax savings will only be \$1,198 and thus PTRC should have only billed for 50% of that amount or \$599. This particular property owner was over billed \$292 by PTRC.

22. Approximately 1,500 of the property owners indicated in Paragraph 14 above were entitled to one or more applicable exemptions. Those 1,500 property owners were over-billed an additional \$45,000 by PTRC.

23. By reason of the foregoing, the Attorney General finds that PTRC has engaged in deceptive business practices and false advertising under GBL §§ 349 and 350 and engaged in repeated and persistent fraudulent and illegal conduct under Executive Law § 63(12).

AGREEMENT

24. PTRC is now willing to enter into an agreement to discontinue the fraudulent, illegal and deceptive practices, without admission of any violation of law.

25. The Attorney General is willing to accept this Assurance of Discontinuance pursuant to Executive Law § 63(15) in lieu of commencing a statutory proceeding.

26. Acceptance of this Assurance by the Attorney General shall not be deemed or construed as an approval by the Attorney General of any of the activities and/or policies of PTRC and no representations shall be made to the contrary;

27. Nothing contained in this Assurance shall be construed to deprive any person of any private right under the law;

28. Pursuant to Executive Law §63(15), evidence of a violation of this Assurance of Discontinuance shall constitute *prima facie* proof of a violation of GBL §§ 349 and 350 and Executive Law §63(12) in any civil action or proceeding thereafter commenced by the Attorney General.

29. **IT IS HEREBY UNDERSTOOD AND AGREED** by PTRC, its principals, agents,

employees, successors and assigns and any entity or individual by or through which anyone of them may act, that it will henceforth comply with the provisions of all applicable laws including but not limited to General Business Law §§ 349 and 350.

30. **IT IS FURTHER UNDERSTOOD AND AGREED** that in connection with the solicitation and carrying on of its business:

- a. If PTRC's fee is to be determined on the basis of a particular tax year's tax rate, PTRC shall not bill its clients until the tax rate for that year is, or has been, certified by Nassau County.
- b. When calculating a client's actual tax savings and the amount due for services rendered, PTRC shall make all necessary adjustments to reflect applicable exemptions for individual property owners; and
- c. Shall refrain from using on its invoices terms such as "property tax reduction", "total assessment savings" and "total tax savings" which, in the context in which they were used by PTRC, were misleading, and instead, use phrases such as "assessed value reduction" and "actual tax savings".

RESTITUTION

31. **IT IS FURTHER UNDERSTOOD AND AGREED** that except with respect to the issue dealt with in Paragraph 32 below, (i) Respondents have made restitution of all amounts overcharged in its May 2005 billing, to its clients who paid in response to that billing. PTRC will continue to make such restitution in the event any other such clients pay that invoice, and include with the refund check a copy of the letter annexed hereto as Exhibit A; and (ii) PTRC sent corrected invoices to its clients who had not paid in response to the May 2005 billing.

32. With respect to those PTRC clients included in the May 2005 billing which are entitled to one or more exemptions for the tax year 2005 / 2006, which clients are referred to in Paragraph 22 above and are identified in a schedule which will be provided to PTRC by the

Attorney General's Office, (the "Schedule"), PTRC shall within 60 days of the date of this Assurance, (i) in the case of any such client who has paid PTRC, issue a refund of any over collection due to failure to account for exemptions in the amount set forth on the Schedule, and each such notice shall be accompanied with a copy of the letter annexed hereto as Exhibit A; and (ii) in the case of any such client who has not paid PTRC, issue a corrected invoice reflecting the correct amount (adjusted for exemptions as set forth on the Schedule) of actual tax savings and the correct amount due for services rendered. Each such corrected invoice shall be accompanied with a copy of the letter annexed hereto as Exhibit B.

PENALTIES

33. **IT IS FURTHER UNDERSTOOD AND AGREED** that Respondents shall pay penalties totaling \$250,000; \$50,000 of which shall be paid at the time this Assurance of Discontinuance is executed; \$100,000 of which shall be payable on or before October 1, 2006; and \$100,000 to be payable on or before December 15, 2006.

COSTS

34. **IT IS FURTHER UNDERSTOOD AND AGREED** that Respondents shall, at the time of the execution of this Assurance, pay to the Attorney General of the State of New York, statutory costs in the amount of \$2,000.00, by certified check or money order, payable to the New York State Department of Law.

COMPLIANCE

35. **IT IS FURTHER UNDERSTOOD AND AGREED** that Respondent shall retain all relevant records, including but not limited to, consumer complaints, advertisements, solicitations, contracts and notices, for a period of three years, beginning with tax years 2005 / 2006 and such records shall be made available for review by the Attorney General, upon request.

36. Respondents shall provide to the Attorney General copies of documents which the Attorney General shall, from time to time, determine are necessary to assure compliance.

37. Respondents shall submit to the Attorney General, no later than 90 days, following the execution of this Assurance of Discontinuance, a sworn statement certifying that it has complied with the provisions of this Assurance and setting forth the manner of its compliance.

WHEREFORE, the following signatures are affixed hereto this 27th day of April, 2006.

PROPERTY TAX REDUCTION CONSULTANTS, INC.

By: _____
SEAN ACOSTA
President

ELIOT SPITZER, Attorney General, State of New York

By: _____
Juan M. Merchan
Assistant Attorney General